

2024:PHHC:104131-DB



M/s NKH Fuels

Versus

--Respondents

M/s Indian Oil Corporation Ltd.

Versus

--Respondents

Present:- Mr. Karmanbir S. Kharbanda, Advocate and
Mr. Randeep Gill, Advocate for the
applicant-appellant in LPA-1026-2024.

Dr. P.K. Sekhon, Advocate, for respondent
No.3-NHAI in both cases.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Ashish Kapoor, Advocate ,
Ms. Navyuggeet Brar, Advocate, for
respondent No.4 in LPA-1026-2024 &
for the applicant-appellant in
LPA-1067-2024 (IOCL).

Mr. Sumeet Mahajan, Senior Advocate with
Mr. Saksham Mahajan, Advocate and
Mr. Shrvij Singla, Advocate for respondent
No.6 in LPA-1026-2024.

CM-2488-LPA-2024 in LPA-1026-2024

Application for condonation of delay of 44 days in filing the

appeal, is allowed, in view of the averments made in the application, duly supported by affidavit. Delay of 44 days in filing the appeal is condoned.

CM stands disposed of.

CM-2591-LPA-2024 in LPA-1067-2024

Application for condonation of delay of 51 days in filing the appeal, is allowed, in view of the averments made in the application, duly supported by affidavit. Delay of 51 days in filing the appeal is condoned.

CM stands disposed of.

Main Appeals

1. This order shall dispose of above mentioned two appeals, wherein challenge is to the order 07.02.2024 passed by learned Single Judge in CWP-26075-2022 and two other connected petitions.

2. While dealing with the withdrawal of the 'NOC Certificate' dated 04.11.2022 by the District Magistrate, Ludhiana which had been issued, the learned Single Judge observed that since the NHAI had not dealt with the issue of 'NOC', the District Magistrate, Ludhiana would not take a final call on the same till then. The learned Single Judge also directed that the interim order would continue till a fresh order is passed by NHAI and the petrol pump if found to be running within the parameters of law, the same will be allowed to continue subject to any order passed by the District Magistrate, Ludhiana. In case of grant of 'NOC' being declined by the NHAI for running of the petrol pump at the particular site, the writ petitioners would undertake to stop the service subject to any order passed by the competent court of law.

3. It is common case of the parties that in the meantime, the Project Director, NHAI/PIU, Ludhiana has passed the order dated

18.04.2024 in compliance of the observations made by learned Single Judge. He has accordingly held that it is not feasible at this stage for the grant of 'NOC'. The relevant part reads as under:-

“Speaking Order:

7. *After having meticulously considering the entire factual position of the proposal, as has been stated hereinabove, the grant of NOC for the fuel station at Ch. 1+048 LHS on Samrala Chowk to Ludhiana Municipal Limit Section of NH-05 is not feasible at this stage keeping in view of the safety of the road users. Accordingly, this office vide letter no.102/NOC/2018/NHAI/PIU-LDH/16142 dated 15.04.2024 has returned the proposal to IOCL. Further, the speaking order is pronounced on 18th day of April, 2024 in compliance to the order dated 07.02.2024 passed by the Hon'ble Punjab & Haryana High Court.”*

4. Various reasons have been given in the above order to come to the said finding. We are, thus, of the considered opinion that the present appeals have been rendered infructuous since apparently the objection has been raised by the NHAI regarding running of the petrol pump.

5. Learned counsel for the appellants, IOCL and M/s NKH Fuels have now raised objections that they were not given adequate opportunity to put forth their case by the NHAI and they were not heard and the order was passed.

6. We are of the considered opinion that since there are various observations made in the impugned order regarding furnishing of proposals and documents, it would have to be specifically pleaded as to whether adequate opportunity was given or not to the present appellants. Even otherwise, objection is there by the NHAI, now the appellants will have to challenge the said order.

7. In such circumstances, we dispose of the appeals as having been rendered infructuous with liberty to the appellants to challenge the order passed and to raise all the issues, which are now sought to be argued by taking recourse of filing a fresh writ petition. We have also been shown the photographs of the petrol pump which is stated to be running on the spot.

8. Keeping in view the fact that petrol pump is running since a considerable time, we deem it appropriate that the said petrol pump shall continue to run for a period of four weeks till the appellants approach the Writ Court by filing a separate writ petition and seek the relief of extending the interim order.

9. Both the appeals are disposed of in the above terms.

(G.S. SANDHAWALIA)
JUDGE

12.08.2024
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No